



PUBLIC SECTOR NEWSLETTER - NEW SOUTH WALES

MEDIA

Flawed citizenship-stripping Bill shouldn't be passed

The Law Council of Australia has reiterated its strident opposition to the Federal Government's proposed citizen-stripping laws, which could render people stateless, do not adhere to international obligations and remain under a constitutional cloud

<https://www.lawcouncil.asn.au/media/media-releases/flawed-citizenship-stripping-bill-shouldnt-be-passed>

Claims of Judicial Overreach

The New South Wales Bar Association has the highest regard for the integrity of the judiciary and has concerns about recent claims in the media of judicial overreach with respect to the judgment of Preston CJ in Gloucester Resources Ltd v Minister for Planning

https://inbrief.nswbar.asn.au/posts/382308183e574d49c74b3c9609072c61/attachment/gloucester_mine_judgment.pdf

Police airport powers recommendations strike balance between security and human rights

Australian airports will be safer and the rights of individuals better protected if a raft of recommendations are applied to the Police Powers at Airports Bill, according to the Law Council of Australia

<https://www.lawcouncil.asn.au/media/media-releases/police-airport-powers-recommendations-strike-balance-between-security-and-human-rights>

High court rejects attempt to challenge Australia's indefinite detention regime

The full bench in Canberra took the highly unusual step of delivering an immediate judgment, after a tumultuous day which saw the plaintiff's lawyers seek to stop them hearing the case and have it sent back to a single judge for reassessment

<https://www.theguardian.com/australia-news/2019/feb/13/stateless-mans-court-challenge-to-indefinite-detention-goes-ahead>

Legal aid lawyers more efficient than publicly funded private lawyers

Preliminary results presented at the 6th Annual Applied Research in Crime and Justice Conference show that publicly funded cases assigned to private lawyers are less likely to be dealt with summarily (i.e. in a Local Court) and are less likely to be committed for sentence than cases dealt with by in-house legal aid lawyers

https://www.bocsar.nsw.gov.au/Pages/bocsar_media-releases/2019/mr-Legal-aid.aspx

See the report here: [The Impact of Private versus Public Legal Representation on Criminal Proceedings](#)

Law Council applauds Family Court appointments

The Law Council welcomes the appointment by Attorney-General Christian Porter of two new judges to the Family Court of Australia. "The Law Council has long called for greater investment in the Family Court, including timely, specialist judicial appointments, to enable the Court to discharge its responsibilities

<https://www.lawcouncil.asn.au/media/media-releases/law-council-applauds-family-court-appointments>
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CIC vital but must uphold separation of powers

Constitutional conflict could occur if a Federal Judicial Commission to investigate alleged judicial misconduct is not separated from the Federal Government's proposed Commonwealth Integrity Commission (CIC), the Law Council of Australia has stated

<https://www.lawcouncil.asn.au/media/media-releases/cic-vital-but-must-uphold-separation-of-powers>

Social disadvantage and emotional abuse link to repeat intimate partner violence

A new study by the NSW Bureau of Crime Statistics and Research (BOCSAR) has found that the odds of being a repeat victim of intimate partner violence (IPV) within 12 months are 10 times higher in the most disadvantaged 20 per cent of the Australian population than in the least disadvantaged 20 per cent

https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2019/mr-Assessing-the-risk-of-repeat-intimate-partner-assault.aspx

See the report here: [Assessing the risk of repeat intimate partner assault](#)

Notifiable Data Breaches for October - December 2018

The latest quarterly report from the Office of the Australian Information Commissioner (OAIC) shows 262 data breaches involving personal information were notified between October and December 2018

<https://www.oaic.gov.au/media-and-speeches/news/notifiable-data-breaches-for-october-december-2018>

Statement on the Royal Commission into Informants

The Royal Commission has advised the Government of new details which have led to the Royal Commission's terms of reference being amended. The Commission has advised that information willingly disclosed to it by Victoria Police indicates that the informant at the centre of this matter was first registered in 1995

<https://www.premier.vic.gov.au/statement-on-the-royal-commission-into-informants/>

Enquiry into how local councils handle complaints from the public

All of Victoria's 79 local councils will be surveyed on how they handle complaints from the public as part of an enquiry undertaken by Victorian Ombudsman, Deborah Glass. Ms Glass said complaints about local government typically account for about a quarter of all complaints to my office each year

<https://www.ombudsman.vic.gov.au/News/Media-Releases/Enquiry-into-how-local-councils-handle-complaints>

Victims to have their say in forensic mental health cases in NSW

Victims of forensic patients will have a greater opportunity to be heard in Mental Health Review Tribunal (MHRT) proceedings following the commencement of new laws which allow submissions to be made outlining the impact a forensic patient's leave or release would have on a victim

<https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/victims-to-have-their-say-in-forensic-mental-health-cases.aspx>

PUBLISHED - ARTICLES, PAPERS, REPORTS

[The practice of dowry and the incidence of dowry abuse in Australia](#)

Senate Standing Committee on Legal and Constitutional Affairs

On 26 June 2018, the Senate referred the practice of dowry and the instance of dowry abuse in Australia to the Legal and Constitutional Affairs References Committee for inquiry and report by 6 December 2018. This report was made public on 13 February 2019

[Explainer: workplace monitoring and surveillance](#)

Alexandra Mateescu, Aiha Nguyen; Data & Society Research Institute: 06 February 2019

This explainer identifies four current trends in workplace monitoring and surveillance: prediction and flagging tools; biometrics and health data; remote monitoring and time-tracking; and gamification and algorithmic management.

[Filicide offenders](#)

Thea Brown, Samantha Bricknell, Willow Bryant, Samantha Lyneham, Danielle Tyson, Paula Fernandez Arias

Australian Institute of Criminology: 06 February 2019

This paper describes offenders charged with the murder or manslaughter of their child(ren) in Australia between 2000–01 and 2011–12 to examine the prevalence of risk factors documented in the literature among custodial parents, non-custodial parents and step-parents

OAICnet

For the latest news about our activities, publications and other relevant information. The first issue for 2019 is now [here](#)

CASES

[Work Health Authority v Outback Ballooning Pty Ltd \[2019\] HCA 2](#)

Constitutional law (Cth) – Powers of Commonwealth Parliament – Territories – Inconsistency between Commonwealth and Territory laws – Where Commonwealth civil aviation law regulates matters preparatory to and subsequent to aircraft flight including embarkation and disembarkation of passengers – Where Commonwealth law implements and extends international obligations designed to achieve uniformity in regulation of civil aviation – Where Territory law regulates work health and safety – Whether Commonwealth law designed to operate within framework of other State, Territory and Commonwealth laws – Whether Commonwealth law contains implicit negative proposition that it is only law with respect to safety of persons affected by operations of aircraft including embarkation – Whether Territory law inconsistent with Commonwealth law.

Words and phrases – “alter, impair or detract from”, “anti-exclusivity clause”, “Chicago Convention”, “civil aviation”, “cover the field”, “embarkation”, “implicit negative proposition”, “indirect inconsistency”, “intention to deal

completely, exhaustively or exclusively”, “legislative intention”, “nationally harmonised laws”, “operations associated with aircraft”, “rule of conduct”, “safety standards”, “subject matter”.

Constitution, ss 109, 122

[Hocking v Director-General of the National Archives of Australia \[2019\] FCAFC 12](#)

ADMINISTRATIVE LAW – applicant sought access under the Archives Act 1983 (Cth) (the Act) to records, being the originals of correspondence received by, and contemporaneously made copies of correspondence sent by, the former Governor-General, Sir John Kerr, or his Official Secretary, to and from The Queen by means of Her Private Secretary – whether those records a “Commonwealth record”, being records that were the property of the Commonwealth, such that public access to them was governed by Div 3 of Pt V of the Act

CONSTITUTIONAL LAW – consideration of relationship between the Governor-General and the Commonwealth – consideration of relationship between the Governor-General and The Queen of Australia

[Knightsbridge North Lawyers Pty Ltd v State of New South Wales \(No 2\) \[2019\] NSWSC 45](#)

ADMINISTRATIVE LAW – Judicial review – Whether appointments of the Chief Commissioner and Commissioners of ICAC invalid – s 64A Independent Commission Against Corruption Act 1988 (NSW) – Consequence of failing to make a written referral of the appointment of the Chief Commissioner to Parliamentary Joint Committee after Independent Commission Against Corruption Amendment Act 2016 (NSW) came into force – Whether s 64A required Joint Committee to consider referred appointments for at least a day before making and communicating its decision and appointments being made – Consequence of consultation required by s 5(2) of the Independent Commission Against Corruption Amendment Act being undertaken before Chief Commissioner appointed – appointments valid - application dismissed – costs

STATUTORY INTERPRETATION - Transitional provisions – Whether clause 19A of the Amendment (Commissioners) Regulation 2017 (NSW) valid – Whether clause 19A “of a savings or transitional nature” – Effect of s 26 of the Interpretation Act 1987 (NSW) – regulation valid

EVIDENCE – Relevance – Opinion required by s 7(c) of the Subordinate Legislation Act 1995 (NSW) – presumption of validity – s 45 Interpretation Act and s 9(1) Subordinate Legislation Act – opinion not relevant

EVIDENCE – Privileges – Client legal privilege – Whether opinion required by s 7(c) of the Subordinate Legislation Act 1995 (NSW) privileged under s 118 of the Evidence Act 1995 – Whether the State was a client of the Attorney or Parliamentary Counsel who gave the opinion – opinion unlikely to be privileged

[Webber v Racing NSW \[2019\] NSWSC 26](#)

ADMINISTRATIVE LAW – judicial review – grounds of review – decision by Racing NSW refusing to renew a trainer’s licence to an experienced thoroughbred trainer – review of licence renewal application prompted by concerns stemming from workers compensation proceedings against the same entity as authorised workers compensation insurer – failure to disclose internal material adverse to plaintiff including material concerning workers compensation claims – late concession by decision-maker that the decision entailed denial of procedural fairness – whether necessary or appropriate to determine remaining grounds of review – where decision no longer operative at time of hearing – utility of relief sought – discretion to grant declaratory relief – impact of decision on plaintiff’s reputation and future applications for a trainer’s licence

[DKB v Commissioner of Police NSW Police Force \[2019\] NSWCATAP](#)

ADMINISTRATIVE LAW- Privacy – exemption – educative and administrative – exemption by other law – no error of law

[Zonneville v Minister for Education \[2019\] NSWCATAD 28](#)

ADMINISTRATIVE LAW – government information – offences – jurisdiction – reviewable decision - reasonableness of searches

[Aldi Foods Pty Ltd v Independent Liquor and Gaming Authority \[2019\] NSWCATAD 26](#)

ADMINISTRATIVE LAW – where respondent refused application for packaged liquor licence – assessment of overall social impact of granting the licence – whether that impact will not be will not be detrimental to the well-being of the local or broader community

PRACTICE AND PROCEDURE

Law Council of Australia Submissions

11 February 2019 - Law Council - [Review of the foreign lawyers’ regulatory regime](#)

Senate Legal and Constitutional Affairs Committee Report - Federal Circuit and Family Court Bill

The report of the Senate Legal and Constitutional Affairs Committee on the Family Court / Federal Circuit Court restructure legislation was tabled on 14 February 2019. The report can be found [here](#).

[Combatting Child Sexual Exploitation Legislation Amendment Bill 2019](#)

On 14 February 2019, the Senate referred the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 22 March 2019

LCA: Constitutional Conflict

The Law Council of Australia has today issued a media release stating that a Constitutional conflict could occur if a Federal Judicial Commission to investigate alleged judicial misconduct is not separated from the Federal Government's proposed Commonwealth Integrity Commission (CIC). A full copy of the media release is available [here](#)

[New AAT website](#)

The AAT is pleased to announce the release of its redesigned website with new content to make it easier to find the information you need.

AAT Bulletins 2019

The AAT Bulletin is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions

[Issue No. 6/2019](#), 11 February 2019

Notice to Legal Practitioners - Update

The Family Court of Australia's [Application for Consent Orders Kit](#) information pages have been updated as a result of the [Civil Law and Justice Legislation Amendment Act 2018](#). References to the terms 'husband' and 'wife' have also been amended to 'party to a marriage' and/or 'party to a de facto relationship'

[2019 COAT National Conference](#)

The 2019 Council of Australasian Tribunals (COAT) National Conference will be held 6 – 7 June in Melbourne

Current Consultations

[Review of the Telecommunication and Other Legislation Amendment \(Assistance and Access\) Act 2018](#), Parliamentary Joint Committee on Intelligence and Security. This review is in addition to two separate statutory reviews, amendments to include a review due to commence by April 2019

[Freedom of Speech Legislation Amendment \(Censorship\) Bill 2018](#), [Freedom of Speech Legislation Amendment \(Insult and Offend\) Bill 2018](#), [Freedom of Speech Legislation Amendment \(Security\) Bill 2018](#)

On 3 December 2018, the Senate extended the committee's reporting date to 8 March 2019

NSW

NCAT: [New adjournment request form to help parties](#)

NCAT's Consumer and Commercial Division has developed a new PDF-fillable form to help parties request an adjournment

[Online Court - Supreme Court Possession List](#)

The Online Court commenced on 6 February 2019 for matters in the Common Law Division Possession List. All defended matters will be eligible for the Online Court unless the registrar otherwise directs.

[ICAC: Operation Gerda witness list - week 2](#)

Witness list for the Operation Gerda public inquiry, week commencing Monday 18 February 2019. Please note that witness lists are subject to change

[ICAC to hold public inquiry into allegations concerning University of Sydney and contract security service providers](#)

They will hold a public inquiry starting on Monday 11 February as part of an investigation it is conducting into allegations concerning the University of Sydney, its contracted security services provider Sydney Night Patrol & Inquiry Co Pty Ltd (SNP Security) and SNP Security's subcontractor, S International Group Pty Ltd (SIG) (Operation Gerda)

Practice and Procedure: New rule for indexation of amounts under the Uniform Law

The [Legal Profession Uniform General Amendment \(Indexation\) Rule 2019](#), made by the Legal Services Council pursuant to the Legal Profession Uniform Law, was published on the Legislation NSW website today, 25 January 2019. The new rule provides the formula for indexation of amounts pursuant to s 471 Legal Profession Uniform Law, and commences on 1 July 2019.

IPC Reminder: 2018-19 Report on the Operation of the GIPA Act

Under the GIPA Act and the GIPA Regulation, agencies are required to report annually on their obligations.

The 2018-19 annual report is currently being prepared and is due to be tabled in Parliament in February 2019.

LEGISLATION

Commonwealth

[Human Services Amendment \(Photographic Identification and Fraud Prevention\) Bill 2019](#)

Introduced HR 14/02/2019 - If enacted, the Human Services Amendment (Photographic Identification and Fraud Prevention) Bill 2019 (the Bill) will require photographic identification on Medicare cards to mitigate against fraudulent use by someone other than the person to whom it is allocated

[Combatting Child Sexual Exploitation Legislation Amendment Bill 2019](#)

Introduced HR 14/02/2019 - The Bill protects children from sexual exploitation by improving the Commonwealth framework of offences relating to child pornography material and child abuse material, overseas child sexual abuse, forced marriage, failing to report child sexual abuse and failing to protect children from such abuse.

[National Disability Insurance Scheme Amendment \(Worker Screening Database\) Bill 2019](#)

Introduced HR 13/02/2019 - The National Disability Insurance Scheme Amendment (Worker Screening Database) Bill 2019 (Bill) amends the National Disability Insurance Scheme Act 2013 (Act) to establish a database for nationally consistent worker screening, for the purpose of minimising the risk of harm to people with disability from those who work closely with them

[Ministers of State \(Checks for Security Purposes\) Bill 2019](#)

Introduced HR 12/02/2019 - The purpose of the Ministers of State (Checks for Security Purposes) Bill 2019 is to ensure that the Prime Minister is fully informed of any security issues that may arise from the personal background and circumstances of persons who have been appointed as Ministers of State including Assistant Ministers and Parliamentary Secretaries. Ministers of State are currently exempt from the security checking and clearance processes that apply to all Australian Government personnel who are allowed access to security classified government information

Regulation

[Marriage \(Celebrant Professional Development\) Statement 2019](#)

14/02/2019 - This instrument sets out a list of professional development activities registered marriage celebrants can choose from to meet their ongoing professional development obligations for 2019

[Jury Exemption Regulations 2019](#)

11/02/2019 - These regulations remake the Jury Exemption Regulations 1987 with minor amendments to ensure the regulations remain fit for purpose and meet the needs of the community.

NSW

Proclamations commencing Acts

[Justice Legislation Amendment Act \(No 3\) 2018 No 87](#) (2019-70) — published LW 15 February 2019

Regulations and other miscellaneous instruments

[Crimes \(Administration of Sentences\) Amendment \(Parole Supervision of Serious Sex Offenders\) Regulation 2019](#) (2019-69) — published LW 13 February 2019

[Electoral Funding Amendment \(Savings and Transitional\) Regulation 2019](#) (2019-58) — published LW 8 February 2019

KEY CONTACTS

PANEL RELATIONSHIP CONTACTS

Your contacts responsible for navigating our firm, connecting you with the appropriate expertise and achieving maximum efficiency.

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HELP DESK SERVICES

Thomson Geer is delighted to offer access to NSW Government to its Legal Help Desk on our usual terms of engagement and as set out below.

Scope

We are pleased to be able to work collaboratively with NSW Government to offer the following services (at no charge):

- advice regarding discrete and non-complex legal queries – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate or, short written advice (max. 1 page);
- the opportunity to 'brainstorm' or discuss topical and complex legal issues with industry specialists – up to 30 minute teleconference with a Partner, Special Counsel or relevant Senior Associate; and
- advice regarding potential transactions – up to 30 minute

teleconference with a Partner, Special Counsel or relevant Senior Associate.

(Help Desk Services)

Please note that the Help Desk Services are only available in respect of any matter which is currently unallocated i.e. to this firm or any other firm.

Key Contact and Help Desk Process

You can access the Help Desk by:

- (a) Calling 02 8248 5810; or
- (b) Emailing legalhelpdesk@tglaw.com.au

Once relevant details are received from you (whether that be by email or over the phone) it will be directed to the appropriate Thomson Geer Partner, Special Counsel or Senior Associate. The Help Desk number and

SUB-PANEL APPOINTMENTS

Thomson Geer are appointed to the following NSW Government sub-panels:

- 1(c) Major commercial matters (incl. ICT)
- 2(a) Commercial and contractual matters
- 4(a) Employment and industrial relations law

- 4(f) Discrimination
- 6(b) General litigation and dispute resolution
- 6(c) Debt recovery